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**Subject: Fair Hearing Request and Procedures for Clients/Applicants**

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Effective Date: October 1, 2005

Revised:

**Policy:** A WIC client or applicant must request a fair hearing no later than 60 days from the date the Local Agency or Clinic gave or mailed the notice of an adverse action against the client or applicant. The request may be written or oral. Any positions or arguments on behalf of the applicant or client may be presented personally or by a representative such as a relative, friend, legal counsel, or other spokesperson.

The Local Agency or Clinic shall attempt to resolve the issue with a preliminary conference within seven (7) days of having received the fair hearing request. If the issue cannot be resolved, the Local Agency or Clinic shall schedule a tentative hearing date as part of the preliminary conference.

The Local Agency or Clinic shall notify the applicant or client in writing of the time and location of the fair hearing at least ten (10) days in advance and shall enclose an explanation of the hearing procedure.

Applicants who are denied WIC benefits may appeal the denial but shall not receive benefits while awaiting the hearing decision.

Clients who appeal the termination of benefits within 15 days of notice of termination shall receive program benefits until a hearing official reaches a decision or until the participant's certification expires, whichever is sooner.

The hearing shall be accessible to the WIC client or applicant or the individual's representative and shall be held within three (3) weeks (21 days) from the date the Local Agency or Clinic received the request for a hearing.

The client or applicant or the individual's representative may withdraw the request for a fair hearing in writing.

An impartial official who does not have any personal involvement in the decision and who was not directly involved in the initial determination of the action that is being contested shall conduct hearings.

All State WIC Office, Local Agency and Clinic hearing records and decisions are subject to open records; however, the names and addresses of clients and other members of the public shall be kept confidential.

**Reference: CFR §246.9**

**Procedure:** When the Local Agency or Clinic receives a request for a fair hearing, the Local Agency or Clinic shall attempt to resolve the issue within seven (7) days. If the issue cannot be resolved, the Local Agency or Clinic shall:

1. schedule a tentative hearing date as part of the preliminary conference;
2. notify the State WIC Office;

3. select an impartial hearing official who does not have any personal involvement in the decision and who was not directly involved in the initial determination of the action that is being contested shall conduct hearings;
4. establish an agency record file for the collection of documents associated with the client's or applicant's fair hearing. Such documents may include, but are not limited to an official report containing the substance of what transpired at the hearing (see #1 in the following section), and all papers and requests filed in the proceeding. The Local Agency or Clinic shall retain this record for three (3) years;
5. proceed with the fair hearing, which shall be held within three (3) weeks from the date the Local Agency or Clinic received the client's, applicant's, or representative's request for a hearing;
6. at least ten (10) days in advance of the fair hearing, notify the client or applicant in writing of the time and location of the fair hearing and include an explanation of the hearing procedure;
7. provide the client, applicant, or representative an opportunity to:
  - a. examine, prior to and during the hearing, the documents and records the Local Agency or Clinic plans to present to support the decision under appeal
  - b. be assisted or represented by an attorney or other person(s);
  - c. bring witnesses;
  - d. advance arguments without undue interference;
  - e. question or refute any testimony or evidence; and
  - f. submit evidence to establish all pertinent facts and circumstances in the case.
8. continue benefits for clients who appeal within 15 days of notice of termination until a hearing official reaches a decision or until the client's certification expires, whichever is sooner;
9. not issue benefits to applicants who are denied benefits at initial certification or a subsequent certification while awaiting the hearing and determination;
10. ensure that all Local Agency and Clinic hearing records and decisions are subject to open records by being available for public inspection; however, keeping the names and addresses of clients and other members of the public confidential; and
11. understand that the Hearing Official's decision is binding on the Local Agency or Clinic.

The Local Agency or Clinic shall ensure that the Hearing Official:

1. in conjunction with the Local Agency or Clinic, arranges for a verbatim transcript or recording of testimony and exhibits or an official report containing the substance of what transpired at the hearing (not necessary to be notarized), together with all papers and requests filed in the proceeding;
2. conducts the hearing in such a manner as to ensure that all relevant issues are considered;
3. requests, receives, and makes part of the hearing record, all evidence determined necessary to decide the issues being raised;

4. regulates the conduct and course of the hearing in a manner that is consistent with due process to ensure an orderly hearing;
5. orders, where relevant and necessary, an independent medical assessment or professional evaluation from a source mutually satisfactory to the client, applicant, or representative and the Local Agency or Clinic;
6. renders a hearing decision that is based exclusively on the hearing record, which will resolve the dispute;
7. renders a decision or decisions that comply with Federal law, regulations, and policies, and is factually based on the hearing record; and
8. advises the client or applicant in writing of the hearing official's decision within 45 days of receiving the request for the hearing;
  - a. if the decision favors the Local Agency or Clinic and the client has continued to receive benefits during the appeal process, determines the date when benefits shall terminate;
  - b. if the decision favors the Local Agency or Clinic, advises the client or applicant in the written hearing decision that the client or applicant has the right to appeal the Hearing Official's decision to the State WIC Office within 15 days of receiving the hearing decision notice and that the appeal must include new evidence and/or reasons the decision should be overturned; and
  - c. if the Local Agency or Clinic has pursued a claim against a client and if the Hearing Official's decision favors the Local Agency or Clinic and includes requiring the client to repay benefits, the Local Agency or Clinic shall resume its efforts to collect the claim.